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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **CESAR RAFAEL MACIAS**

15 5405 Newtonia Dr., #B
16 Los Angeles, CA 90032

17 Applicant For a Pharmacy Technician
18 Registration

19 Respondent.

Case No. 4122

OAH No. L-2012010451

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

20 **FINDINGS OF FACT**

21 1. On or about April 27, 2012, Complainant Virginia Herold, in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Statement of Issues No. 4122 against Cesar Rafael Macias ("Respondent") before the Board of
24 Pharmacy.

25 2. On or about July 6, 2010, Respondent filed an application dated June 16, 2010, with
26 the Board of Pharmacy to obtain Registration as a Pharmacy Technician.

27 3. On or about April 28, 2011, the Board issued a letter denying Respondent's
28 application for Registration as a Pharmacy Technician. On or about June 23, 2011, Respondent
29 appealed the Board's denial of his application and requested a hearing.

1 4. On or about May 3, 2012, Sylvia Reyes, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Statement of Issues No. 4122, Statement to
3 Respondent, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
4 11507.7 to Respondent's address on the application form, which was and is 5405 Newtonia Dr.,
5 #B, Los Angeles, CA 90032. A copy of the Statement of Issues is attached as **Exhibit A**, and is
6 incorporated herein by reference.

7 5. Service of the Statement of Issues was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 6. On or about June 23, 2011, Respondent appealed the denial of his application and
10 requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
11 address on the application and it informed him that an administrative hearing in this matter was
12 scheduled for July 16, 2012. Respondent failed to appear at that hearing.

13 7. Business and Professions Code section 118 states, in pertinent part:

14 (a) The withdrawal of an application for a license after it has been filed with a
15 board in the department shall not, unless the board has consented in writing to such
16 withdrawal, deprive the board of its authority to institute or continue a proceeding
against the applicant for the denial of the license upon any ground provided by law or
to enter an order denying the license upon any such ground.

17 8. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

21 9. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

26 10. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on
28 evidence on file herein, finds that the allegations, in Statement of Issues No. 4122 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Cesar Rafael Macias has subjected his Application for Registration as a Pharmacy Technician to denial.

2. Service of Statement of Issues No. 4122 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Respondent's application is subject to denial under section 475, subdivision (a)(2) and section 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician. Specifically, on or about March 18, 2010, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 459 [burglary], in the criminal proceeding entitled *The People of the State of California vs. Cesar Rafael Macias* (Super. Ct. Los Angeles County, 2010, No. GA078863). The conviction and the circumstances underlying the conviction are described in more particularity in First Amended Statement of Issues No. 4122, herein incorporated by reference.

b. Respondent's application is subject to denial under section 475, subdivision (a)(3) and section 480, subdivision (a)(2) of the Code in that Respondent committed an act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another when he stole money from three cash registers at J.C. Penny, his place of employment. The dishonest acts are described in more particularity in First Amended Statement of Issues No. 4122, herein incorporated by reference.

c. Respondent's application is subject to denial under Code section 475, subdivision (a)(4), section 480, subdivision (a)(3) and section 4301, subdivisions (f) and (l) on the grounds of unprofessional conduct in that Respondent committed acts which, if done by one holding a license would be grounds for discipline on that license. Specifically, Respondent

1 committed an act involving dishonesty, fraud or deceit when he stole money from three cash
2 registers at J.C. Penny, his place of employment. Furthermore, Respondent was convicted of
3 burglary for his actions. The dishonest acts are described in more particularity in First Amended
4 Statement of Issues No. 4122, herein incorporated by reference.

5 **ORDER**

6 IT IS SO ORDERED that the application of Respondent Cesar Rafael Macias is hereby
7 denied.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on October 22, 2012.

13 It is so ORDERED ON September 21, 2012

14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA

17 
18 By _____
19 STANLEY C. WEISSER
20 Board President
21

22 DOJ docket number: LA2011601140
23 51134928.DOC

24 Attachment:

25 Exhibit A: First Amended Statement of Issues No. 4122
26
27
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Exhibit A

Statement of Issues No. 4122

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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 4122

12 **CESAR RAFAEL MACIAS**

**FIRST AMENDED STATEMENT OF
ISSUES**

13 5405 Newtonia Dr., #B
14 Los Angeles, CA 90032

15 Pharmacy Technician Applicant

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 6, 2010, the Board of Pharmacy, Department of Consumer Affairs
22 ("Board") received an application for Registration as a Pharmacy Technician from Cesar Rafael
23 Macias ("Respondent"). On or about June 16, 2010, Cesar Rafael Macias certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.
25 The Board denied the application on April 28, 2011.

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28 ///

JURISDICTION AND STATUTORY PROVISIONS

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 475 of the Code states, in pertinent part:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

...

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

6. Section 480 of the Code states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

7. Section 4301 of the Code states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Criminal Conviction)

9. Respondent's application is subject to denial under section 475, subdivision (a)(2) and section 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician applicant, as follows:

- 1 a. On or about March 18, 2010, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Penal Code section 459
3 [burglary], a misdemeanor, in the criminal proceeding entitled *The People of the*
4 *State of California vs. Cesar Rafael Macias* (Super. Ct. Los Angeles County,
5 2010, No. GA078863). The Court placed Respondent on probation for a period
6 of three (3) years, with terms and conditions. Additionally, the Court ordered
7 Respondent to complete 30 days of Cal-Trans and perform 200 hours of
8 community service.
- 9 b. The circumstances surrounding the conviction are that on or between
10 November 11, 2009 and December 12, 2009, while Respondent was employed at
11 J. C. Penny's Department Store in Arcadia, California, he unlawfully took money
12 from cash registers at J.C. Penny, his place of employment.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Act Involving Dishonesty, Fraud or Deceit)**

15 10. Respondent's application is subject to denial under section 475, subdivision (a)(3)
16 and section 480, subdivision (a)(2) of the Code in that Respondent committed an act involving
17 dishonesty, fraud or deceit with the intent to substantially benefit himself or another , or
18 substantially injure another when he stole money from three cash registers. Complainant refers
19 to, and by this reference incorporates the allegation set forth above in paragraph 10,
20 subparagraphs (a) and (b), inclusive, as though set forth fully herein.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Conduct Warranting Discipline if Committed by Licentiate)**

23 11. Respondent's application is subject to denial under Code section 475, subdivision
24 (a)(4), section 480, subdivision (a)(3) and section 4301, subdivisions (f) and (l) on the grounds of
25 unprofessional conduct in that Respondent committed acts which, if done by one holding a
26 license would be grounds for discipline on that license. The circumstances are that Respondent
27 committed an act involving dishonesty, fraud or deceit when he stole money from three cash
28 registers. Furthermore, Respondent was convicted of burglary for his actions. Complainant

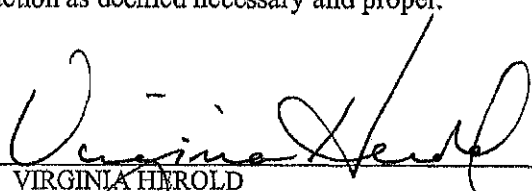
1 refers to, and by this reference incorporates the allegation set forth above in paragraph 10,
2 subparagraphs (a) and (b), inclusive, as though set forth fully herein.

3 PRAVER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

- 6 1. Denying the application of Cesar Rafael Macias for a Pharmacy Technician License;
7 and
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 4/27/12


11 VIRGINIA HEROLD
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 Complainant

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